



January 28, 2016

Steve Wright
Columbia Falls Aluminum Co. LLC
2000 Aluminum Dr.
Columbia Falls, MT 59912

Cliff Boyd
CALBAG Resources, LLC
1700 Topaz Dr.
Missoula, MT 59808

Subject: CFAC Plan Review 2 [EPA ID No. MTD057561763; FID 2386]

Dear Messrs. Wright and Boyd:

On November 20, 2015, the Montana Department of Environmental Quality (Department) received the revised (November 2015) Waste Management Plan and Schedule for Spent Pot Liner Removal, Reuse, and Disposal for Columbia Falls Aluminum Company (Plan). The revised Plan is in response to the Department's September 2, 2015 review letter, October 26, 2015 violation letter and required per the Administrative Order on Consent (Consent Order), Paragraph 18. Columbia Falls Aluminum Co. LLC (CFAC) and Calbag Resources, LLC (Calbag) may not implement the Plan until they receive written approval of the Plan from the Department.

On December 4, 2015, the Department received the draft Building 1, Reuse, Repurpose, and Recyclable Materials Waste Determination Summary Report (Report). On January 13, 2016, the Department approved the Report. Procedures outlined in the Report will need to be included and updated in the Plan. At this time the Department would request that you update the Plan accordingly and resubmit it for review.

The Department has completed a partial review of the Plan and has the following preliminary comments:

General

1. Include anode carbon testing, management and disposal at the Pacmet Facility, including the formal purchase agreement with Pacmet in the Plan. Provide information with regard to the temporary storage on the Russell property in Kalispell and measures taken to correct the violations detailed in the Department's October 26, 2015 violation letter. This information was submitted to the Department on 12/4/2015, with a letter titled: *Russell Property and Columbia Falls Aluminum Company (CFAC) facility Anode Carbon*.
2. Reference and include the Report in the Plan.
3. Pursuant to Paragraph 19 of the Consent Order, the Plan must describe how the removal, processing, storage, and transport of hazardous wastes complies with the substantive requirements of 40 CFR Part 264, Subpart I - Use and Management of Containers, which is incorporated by reference in Administrative Rules of Montana (ARM) 17.53.801.
4. The Plan submittal, Consent Order, Plan, and the Department's review of the Plan all assume that CFAC and Calbag will remove and properly dispose of all hazardous waste from the Pot Room Building. Neither the Consent Order nor the Plan, once approved by the Department, are intended to permit CFAC and Calbag to leave hazardous waste from the Pot Room building on the property. Additional cleanup may be required under other authorities, including, but not limited to, CERCLA.

5. The Plan must address payment of remediation waste fees in accordance with ARM 17.53.113 and paragraph 27 of the Consent Order. You will be required to submit a Hazardous Waste Generator Report. The Department will invoice you annually based on this report. This must be included in Section 3.0 as stated in the Index for Addressing Comments.
6. Reference in the Plan that the Department will approve the start of the 90-day period for processing, storing, transporting, and disposing of (reference Consent Order, Paragraph 20) each of the 72 cathodes in the West Pot Room, which do not contain a heel, beginning when each cathode is removed from the pot hole with the overhead crane. The 90-day trigger/start date for the remaining cathodes will begin when the aluminum heel of the pot is removed.
7. The Plan must indicate how the waste oils listed in Table 1 (hydraulic oil, motor oil, and gear oil) will be disposed of or recycled. Provide information on the facility/firm you intend to use. Please ensure that all requirements set forth by 40 CFR Part 279 for Used Oil are met.

Index For Addressing Comments

8. Update the Index to include all comments in this letter.
9. Revise Number 8 Response to indicate Section 4.0. Additionally, the Plan does not contain Appendix M, reference Table 2. Update to include this table.

Section 2.1

10. At closure of the containment building, you must remove or decontaminate all waste residues and contaminated components, per 40 CFR § 264.1102(a).

Section 2.1.1

11. Include information and procedures for testing aluminum heels in direct contact with K088 to verify they have been decontaminated per 40 CFR § 264.1102(a).
12. Include language to indicate that all particulate matter collected from the work area for SPL removal and cleaning must be managed and disposed of as K088 waste.

Section 2.1.5 Reusable Material

13. Reference or update with information from the Report on testing of reusable materials, which have the potential to be contaminated with hazardous waste and how they will be decontaminated before leaving the pot room building or digging area, to prevent tracking of hazardous waste out of the containment area, as required by 40 CFR § 265.1101(c)(1)(iii).

Section 2.2

14. Characteristic hazard wastes must be removed from the site within 90 days of the accumulation start date. Waste is generated either when it is produced or when it is first caused to be subject to regulation (40 CFR § 260.10), not when a generator first analyzes the waste.

Section 2.2.1

15. Indicate that the Department has approved the start of the 90-day period for processing, storing, transporting, and disposing of (reference Consent Order, Paragraph 20) each of the 72 cathodes in the West Pot Room, which do not contain a heel, beginning when each cathode is removed from the pot hole with the overhead crane. The 90-day trigger/start date for the remaining cathodes will begin when the aluminum heel of the pot is removed.

Section 2.2.5 Universal Wastes

16. Include a new section for Universal Wastes as listed in Table 1. ARM 17.53.1301 adopts Universal Waste management requirements set forth by 40 CFR Part 273. Please review the universal waste generator regulations. Please determine if you are a universal waste generator; if so, please also review the small and large quantity handlers of universal waste requirements to ensure regulations are met. If it has been determined that you are a large quantity handler of universal waste please ensure you complete an E.P.A. Form 8700-12 for notification.

Section 2.4 Waste Tracking and Documentation Reporting

17. Provide a proposed monthly status report for this project.

Section 4.1

18. Paragraph 3; refer to Table 2, not Table 1.

Table 1 - Inventory

19. Include Anode Carbon, Aluminum Heels and interior structural building components.
20. Revise the Table to indicate that Universal Wastes are Hazardous Wastes.

Attachment 2 Bond Documents

21. The bond amount must match the approved cost estimate amount for this project. The current estimate is \$7.585 million and the bond amount is \$7.0 million.

Appendix B – Calbag Health and Safety Plan

22. The Department acknowledges that you have a Health and Safety Plan for this Project. Your company's complete Health and Safety Plan should be included as part of the Plan.

Appendix C – Preparation of Containment Area

23. Provide a North arrow for the Typical Containment in North Crane Bay drawing.
24. Provide information on the HEPA Vacuum as shown in the Cleaning Area.

Appendix D - Dust Management, Equipment Decontamination and Housekeeping Procedures

25. Verify in writing that each truck will be decontaminated prior to leaving the digging area to prevent tracking of hazardous waste out of the containment area, as required by 40 CFR § 265.1101(c)(1)(iii).
26. At closure of the containment building, you must remove or decontaminate all waste residues, contaminated containment system components, etc. per 40 CFR § 264.1102(a).
27. Provide additional information on the filter management, filter disposal and operational maintenance procedures for the trailer-mounted Hurricane vacuum to be placed inside the SPL digging area. Verify that the capacity of the vacuum is adequate for the enclosed digging area. Note that 40 CFR § 264.1101(c)(1)(iv) requires operators of containment buildings to take measures to prevent fugitive emissions. Additionally, you will need to meet the requirements of ARM 17.8.308, which states that no person shall cause or authorize the production, handling, transportation, or storage of any material unless reasonable precautions to control emissions of airborne particulate matter are taken.

28. Verify in writing that you will be in compliance with 40 CFR § 264.1102, which concerns closure and post-closure care.
29. Include language to indicate that all particulate matter collected from the work area for SPL removal and cleaning area must be managed and disposed of as K088 waste.

Appendix E Sampling Analysis Plan

30. Reference or update with information from the Report to include information on testing, management and disposal of materials, which have the potential to be contaminated with hazardous waste and how they will be decontaminated before leaving the pot room building or digging area to prevent tracking of hazardous waste out of the containment area, as required by 40 CFR § 265.1101(c)(1)(iii).

Appendix F Quality Assurance Project Plan

31. Update this section to reflect procedures approved in the Report.
32. In Section 2.4, clearly state that if sample test results exceed the threshold concentrations listed in Table 1 for RCRA 8 metals, the material will be classified and managed as a hazardous waste.

Appendix H Transport Spill Contingency Plan

33. Verify that this Section meets the requirements of 40 CFR Part 263, Subpart C. The Spill Contingency Plan must address each state, which any hazardous wastes from this Facility will be transported across. Include a transport map and route itinerary.

Section 3.0 Financial Management

34. Include payment of the Department remediation fees as stated in the Index for Addressing Comments. The maximum annual fee is \$25,000.

Section 3.1 Cost Estimate

35. Include all costs associated with hazardous waste removal and disposal in the cost estimate (SAP, labor, materials, equipment, and Montana Hazardous Waste Generator fees). As required by 40 CFR § 264.142(a)(2), the cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility.

Section 3.2 Performance Bond

36. The purpose of Condition II.19 of the Consent Order is to provide assurance that funds will be available to pay for expected costs of removal and disposal of hazardous waste at the CFAC facility and to ensure such costs will not be borne by the public, government, or other businesses in the event of bankruptcy, corporate dissolution or facility abandonment. Calbag has provided a copy of a performance and payment bond and a certificate of liability insurance with insurance policy documentation to the Department. The bond, issued by U.S. Specialty Insurance Company, names Calbag Resources, LLC (Calbag) as the Principal and Columbia Falls Aluminum Company, LLC (CFAC) as the Obligor. The bond does not meet Condition II.19 or the financial assurance requirements of 40 CFR Part 264, Subpart H, for the reasons outlined in items a) through e) below.

The requirements of 40 CFR Part 264 are adopted in ARM 17.53.801. Substitution of state terms for federal terms is found in ARM 17.53.107. Specific to this comment, the terms “EPA” and “Regional Administrator” mean the Montana Department of Environmental Quality and the Director of the Montana Department of Environmental Quality, respectively.

- a) As per 40 CFR § 264.151(c), performance bonds are only allowed for a permitted hazardous waste facility and as per 40 CFR § 264.143(g), cannot be used in combination with other financial assurance mechanisms.

40 CFR § 264.151(c): ...*Whereas said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA), to have a permit in order to own or operate each hazardous waste management facility identified above...*

40 CFR §264.143(g): *An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund...*

- b) The performance and payment bond names CFAC as the Obligee; the Department is not named as having the authority to command payment of the bond proceeds into a standby trust created under the requirements of the bond and administrative rules. 40 CFR § 264.151(c) requires that a surety bond posted for closure must state that the surety, upon notification by the Department, shall pay the proceeds of the bond into the standby trust: *Upon notification by an EPA Regional Administrator that the Principal has been found in violation of the closure requirements of 40 CFR part 264, for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the EPA Regional Administrator.*
- c) As required by 40 CFR § 264.143(b)(2), wording of a payment bond must be identical to the wording specified in 40 CFR § 264.151(b) or 40 CFR § 264.151(c), respectively. The performance and payment bond submitted by Calbag does not meet this requirement.
- d) A standby trust fund must accompany a surety bond, as required in 40 CFR § 264.143(b)(3). If Calbag and CFAC demonstrate financial assurance with a surety bond, a standby trust fund must be established and a standby trust agreement submitted with the bond.

40 CFR 264.143(b)(2): *The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Regional Administrator...*

- e) The standby trust fund must meet the requirements of 40 CFR § 264.143(a), with exceptions noted in 40 CFR § 264.143(b)(3)(i)–(ii). Wording of the standby trust agreement must be identical to the wording specified in 40 CFR § 264.151(a)(1). Two of the requirements of that subsection are that §§ 3 and 4 of the standby trust must state, in part, that "The Grantor and the Trustee hereby establish a trust fund, the 'Fund,' for the benefit of EPA," and that "The Trustee shall make payments from the Fund as the EPA Regional Administrator shall direct, in writing, to provide for the payment of the costs of closure ... of the facilities covered by this Agreement."

- 37. As stated in Comment 36, the performance bond presented to the Department does not meet the applicable financial assurance requirements of the Consent Order and 40 CFR Part 264, Subpart H. A financial assurance mechanism which meets these requirements must be submitted, with wording in

accordance with 40 CFR 264.151. The amount of financial assurance must be equal to the cost estimate for closure, as required in Paragraph 21 of the Consent Order.

Section 3.3 Insurance

38. Liability submittals appear to satisfy the requirements of 40 CFR § 264.147(a), which provides that with the exception of comment 39 below owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least \$1 million per occurrence and \$2 million annual aggregate. As Parties to the Consent Order, CFAC and Calbag must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from activities conducted when completing the requirements of the Consent Order. Liability requirements for sudden occurrences are found in § 264.147.
39. The certificate of liability insurance submitted by Calbag provides information regarding Calbag's liability insurance. However, to meet the requirements for liability insurance in § 264.147(1)(i), each insurance policy must be amended by an attachment of a Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. A signed duplicate original of the endorsement or certificate must be submitted to the Department. Wording must be as specified in §264.151(i) for the endorsement, or § 264.151(j) for the certificate.

Available mechanisms

Calbag and CFAC have several options for demonstrating financial assurance and liability coverage. The options are listed in the following bullets. The Department is willing to assist Calbag and CFAC with financial assurance language development to ensure the chosen mechanism meets the requirements of Condition II.19 of the Consent Order.

Financial Assurance Mechanisms

- Trust fund;
- Surety bond guaranteeing payment into a closure standby trust fund;
- Closure letter of credit;
- Closure insurance;
- Financial test or corporate guarantee for closure; or
- Use of multiple financial mechanisms (limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance).

As noted above, performance bonds are allowed only for a permitted hazardous waste facility, see § 264.151(c), and cannot be used in combination with other financial assurance mechanisms.

Liability Coverage Mechanisms

- Liability insurance;
- Financial test or guarantee;
- Letter of credit;
- Surety bond;
- Trust fund; or
- Combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, with some restrictions.

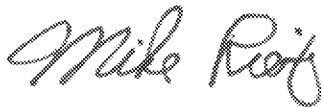
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Please provide the Department with a proposed schedule for Plan submittal and approval.

The comments listed above are based on a partial review of the Plan as submitted. The approved Report rendered several sections of the Plan obsolete. Once the updated comprehensive Plan is submitted, the Department will complete a comprehensive review. This letter does not constitute Plan approval. Please modify the plan to address the comments in this letter and resubmit to Mike Rieger at the address listed below. CFAC and Calbag may not implement the Plan until Calbag and CFAC receive written approval of the Plan from the Department.

If you have any questions, please contact me at (406) 444-3937.

Sincerely,



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